

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD AGEE, JR., an individual, *et al.*,

Plaintiffs,

v.

JOCELYN BENSON, in her official capacity as the Secretary of State of Michigan, *et al.*;

Defendants.

Case No. 1:22-cv-00272

Three-Judge Panel Appointed Pursuant to 28 U.S.C. § 2284(a)

**JOINT MOTION FOR STAY OF PLAINTIFFS' DEADLINE TO FILE
MOTION FOR FEES AND COSTS**

EXPEDITED CONSIDERATION REQUESTED

The parties, by and through their respective counsel, state as follows for their joint motion for stay of Plaintiffs' deadline to file a motion for fees and costs:

1. 52 U.S.C. § 10310(e) provides “[i]n any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee, reasonable expert fees, and other reasonable litigation expenses as part of the costs.”

2. 42 U.S.C § 1988 provides “[i]n any action or proceeding to enforce a provision of sections . . .1983 . . . of this title . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs”

3. Fed. R. Civ. P. 54(d)(2)(B)(i) states that “[u]nless a statute or a court order provides otherwise,” a motion for attorneys’ fees must be filed “no later than 14 days after the entry of judgment” (emphasis added).

4. Consistent with Fed. R. Civ. P. 54(d)(2)(B), the Sixth Circuit has long held that “courts are allowed to establish their own timeliness standards for fee requests regardless of the federal rule's fourteen-day deadline.” *Raub v. Moon Lake Prop. Owners’ Ass’n*, 718 F. App’x 407, 409 (6th Cir. 2018) (citing *Stallworth v. Greater Cleveland Reg’l Transit Auth.*, 105 F.3d 252, 257 (6th Cir. 1997)).

5. As a result of this Court’s December 21, 2023 Opinion and Order, ECF No. 131, Plaintiffs intend to file a motion for fees and costs as authorized by law. The December 21, 2023 Opinion and Order was not a final judgment because it did not “adjudicat[e] all the claims and all the parties’ rights and liabilities,” Fed. R. Civ. P. 54(a), as a remedial proceeding has yet to occur. *See Abbott v. Perez*, 138 S. Ct. 2305, 2319–21 (2018) (treating appeal after liability ruling, but before remedial proceeding, as taken from an interlocutory injunction, not from final judgment). Further proceedings in this Court or on appeal may alter Plaintiffs’ entitlement to attorney fees in ways that cannot currently be ascertained with complete accuracy. However, from the definition of “judgment” in Rule 54(a), and out of an abundance of caution, the parties assume the December 21, 2023 Opinion and Order begins the clock on Plaintiffs’ motion for attorney’s fees insofar as their claim of entitlement to such fees may be based on that order.

6. In the interest of judicial efficiency, the parties bring this joint motion and request the Court stay the deadline by which Plaintiffs must file any motion for attorneys’ fees, expert fees, costs, or other litigation expenses authorized by law until such time as Plaintiffs’ right to attorney’s fees, and the amount of such an entitlement, can be more accurately ascertained, and until the Court has entered an appropriate briefing schedule which affords the parties sufficient time to attempt to resolve the

issue without court intervention. Without a stay of the deadline, there is a risk that Plaintiffs' claim to attorney's fees may be resolved in piecemeal fashion, as Plaintiffs may tender additional claims to attorney's fees based on future case events and Defendants may challenge Plaintiffs' entitlement to any fees (or the amount) based on future events. The parties agree that it would be optimal to resolve the attorney's fee issue at one point in time once rights and liabilities have been fully clarified.

7. Expedited consideration is necessary as January 4, 2024, will mark the 14th day after entry of this Court's December 21, 2023 Opinion and Order. W.D. Mich. LCivR 7.1(e).

8. Pursuant to W.D. Mich. LCivR 5.7(g), a proposed order granting the relief requested herein is attached as **Exhibit A**. This proposed order and relief requested complies with W.D. Mich. LCivR 1.5 as it is "consistent with these [local] rules and the Federal Rules of Civil Procedure.

WHEREFORE, the parties respectfully request that the Court enter an Order staying the deadline by which Plaintiffs must file any motion for attorneys' fees, expert fees, costs, or other litigation expenses authorized by law until such time as the Court has entered an appropriate briefing schedule.

Respectfully submitted,

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EXHIBIT A

UNITED STATES DISTRICT COURT
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Three-Judge Panel Appointed Pursuant to 28 U.S.C. § 2284(a)

ORDER GRANTING JOINT MOTION FOR STAY OF PLAINTIFFS’ DEADLINE TO FILE MOTION FOR FEES AND COSTS

Pending before the Court is the parties’ joint motion to stay the deadline by which Plaintiffs must file any motion for attorneys’ fees, expert fees, costs, or other litigation expenses authorized by law until such time as the Court has entered an appropriate briefing schedule.

Upon due consideration of the joint motion by the Court, the motion is GRANTED.

At the appropriate time, the Court will set a briefing schedule for Plaintiffs’ motion for fees and costs.

IT IS SO ORDERED.

Dated: _____

/s/ _____
Hon. Paul L. Maloney
United States District Judge
On behalf of the Three-Judge
Panel